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APPENDIX A

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS

I. UNITED STATES CONSTITUTION

ARTICLE 1, Section 8:

The Congress shall have Power . . .

To regulate Commerce with foreign Nations, and among the several States . . . .

* * * *

ARTICLE IV, Section 1:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be provided, and the Effect thereof.

* * * *

AMENDMENT XIV, Section 5:

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

II. ACTS OF CONGRESS

The "Western Union" statute:

12 U.S.C. § 2501. Congressional findings and declaration of purpose

The Congress finds and declares that—

(1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments;

(2) a substantial majority of such purchasers reside in the States where such instruments are purchased;

(3) the States wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment;

(4) it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto; and

(5) the cost of maintaining and retrieving addresses of purchasers of money orders and traveler's checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments.

§ 2502. Definitions

As used in this chapter—

(1) "banking organization" means any bank, trust company, savings bank, safe deposit company, or a private banker engaged in business in the United States;

(2) "business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals; and

(3) "financial organization" means any savings and loan association, building and loan association, credit union, or investment company engaged in business in the United States.

§ 2503. State entitlement to escheat or custody

Where any sum is payable on a money order, traveler's check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable—

(1) if the books and records of such banking or financial organization or business association show

the State in which such money order, traveler's check, or similar written instrument was purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum;

(2) if the books and records of such banking or financial organization or business association do not show the State in which such money order, traveler's check, or similar written instrument was purchased, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, until another State shall demonstrate by written evidence that it is the State of purchase; or

(3) if the books and records of such banking or financial organizations or business association show the State in which such money order, traveler's check, or similar written instrument was purchased and the laws of the State of purchase do not provide for the escheat or custodial taking of the sum payable on such instrument, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, subject to the right of the State of purchase to recover such sum from the State of principal place of business if and when the law of the State of purchase makes provision for escheat or custodial taking of such sum.

III. UNIFORM ACTS—SELECTED PROVISIONS

A. UNIFORM UNCLAIMED PROPERTY ACT (1981 ACT)

§ 1. [Definitions and Use of Terms]

As used in this Act, unless the context otherwise requires:

(1) "Administrator" means [ ].

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Attorney general" means the chief legal officer of this State.

(4) "Banking organization" means a bank, trust company, savings bank, [industrial bank, land bank, safe deposit company,] private banker, or any organization defined by other law as a bank or banking organization.

(5) "Business association" means a non-public corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of 2 or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a unincorporated person.

(7) "Financial organization" means a savings and loan association, [cooperative bank,] building and loan association, or credit union.

(8) "Holder" means a person, wherever organized or domiciled, who is:

(i) in possession of property belonging to another,

(ii) a trustee, or

(iii) indebted to another on an obligation.

(9) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(10) "Intangible property" includes:

(i) monies, checks, drafts, deposits, interest, dividends, and income;

(ii) credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;

(iii) stocks and other intangible ownership interests in business associations;

(iv) monies deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(v) amounts due and payable under the terms of insurance policies; and

(vi) amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(11) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(12) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of

other intangible property, or a person having a legal or equitable interest in property subject to this Act or his legal representative.

(13) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(14) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

(15) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

§ 2. [Property Presumed Abandoned; General Rule]

(a) Except as otherwise provided by this Act, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than 5 years after it became payable or distributable is presumed abandoned.

(b) Property is payable or distributable for the purpose of this Act notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

§ 3. [General Rules for Taking Custody of Intangible Unclaimed Property]

Unless otherwise provided in this Act or by other statute of this State, intangible property is subject to the custody of this State as unclaimed property if the conditions rais-

ing a presumption of abandonment under Sections 2 and 5 through 16 are satisfied and:

(1) the last known address, as shown on the records of the holder, of the apparent owner is in this State;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this State;

(3) the records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(i) the last known address of the person entitled to the property is in this State, or

(ii) the holder is a domiciliary or a government or governmental subdivision or agency of this State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) the last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this State;

(5) the last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this State; or

(6) the transaction out of which the property arose occurred in this State, and

(i) (A) the last known address of the apparent owner or other person entitled to the property is unknown, or

(B) the last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property, and

(ii) the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

* * * *

§ 11. [Property of Business Associations Held in Course of Dissolution]

Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned.

§ 12. [Property Held By Agents and Fiduciaries]

(a) Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within 5 years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

(b) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the Internal Revenue laws of the United States are not payable or distributable within the meaning of subsection (a) unless, under

the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(c) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.

(d) For the purposes of this Act, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

* * * *

§ 17. [Report of Abandoned Property]

(a) A person holding property tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this Act shall report to the administrator concerning the property as provided in this section.

(b) The report must be verified and must include:

(1) except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of $25 or more presumed abandoned under this Act;

(2) in the case of unclaimed funds of $25 or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(3) in the case of the contents of a safe deposit box or other safekeeping repository or of other tan-

gible property, a description of the property and the place where it is held and may be inspected by the administrator and any amounts owing to the holder;

(4) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under $25 each may be reported in the aggregate;

(5) the date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(6) other information the administrator prescribes by rule as necessary for the administration of this Act.

(c) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his name while holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

(d) The report must be filed before November 1 of each year as of June 30, next preceding, but the report of any life insurance company must be filed before May 1 of each year as of December 31 next preceding. On written request by any person required to file a report, the administrator may postpone the reporting date.

(e) Not more than 120 days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this Act shall send written notice to the apparent owner at his last known address informing him that the holder is in possession of property subject to this Act if:

(i) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate,

(ii) the claim of the apparent owner is not barred by the statute of limitations, and

(iii) the property has a value of $50 or more.

* * * *

§ 19. [Payment or Delivery of Abandoned Property]

(a) Except as otherwise provided in subsections (b) and (c), a person who is required to file a report under Section 17, within 6 months after the final date for filing the report as required by Section 17, shall pay or deliver to the administrator all abandoned property required to be reported.

(b) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the administrator, and the property will no longer be presumed abandoned. In that case, the holder shall file with the administrator a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(c) Property reported under Section 17 for which the holder is not required to report the name of the apparent owner must be delivered to the administrator at the time of filing the report.

(d) The holder of an interest under Section 10 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the administrator. Upon delivery of a duplicate certificate to the administrator, the holder and any transfer agent, registrar, or other person acting for or on behalf

of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with the provision of Section 20 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the administrator, for any losses or damages resulting to any person by the issuance and delivery to the administrator of the duplicate certificate.

§ 20. [Custody by State; Holder Relieved from Liability; Reimbursement of Holder Paying Claim; Reclaiming for Owner; Defense of Holder; Payment of Safe Deposit Box or Repository Charges]

(a) Upon the payment or delivery of property to the administrator, the state assumes custody and responsibility for the safe-keeping of the property. A person who pays or delivers property to the administrator in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

(b) A holder who has paid money to the administrator pursuant to this Act may make payment to any person appearing to the holder to be entitled to payment and, upon filing proof of payment and proof that the payee was entitled thereto, the administrator shall promptly reimburse the holder for the payment without imposing any fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a travelers check or money order, the holder must be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder must be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under Section 29(a).

(c) A holder who has delivered property (including a certificate of any interest in a business association) other than money to the administrator pursuant to this Act may reclaim the property if still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

(d) The administrator may accept the holder's affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

(e) If the holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(f) For the purposes of this section, "good faith" means that

(1) payment or delivery was made in a reasonable attempt to comply with this Act;

(2) the person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to him, that the property was abandoned for the purposes of this Act; and

(3) there is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(g) Property removed from a safe deposit box or other safe-keeping repository is received by the administrator subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be re-

imbursed for unpaid rent or storage charges. The administrator shall reimburse or pay the holder out of the proceeds remaining after deducting the administrator's selling cost.

* * * * *

§ 25. [Claim of Another State to Recover Property; Procedure]

(a) At any time after property has been paid or delivered to the administrator under this Act another state may recover the property if:

(1) the property was subjected to custody by this State because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this Act, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(2) the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(3) the records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(4) the property was subjected to custody by this State under Section 3(b) and under the laws of the state of domicile of the holder the property has

escheated to or become subject to a claim of abandonment by that state; or

(5) the property is the sum payable on a travelers check, money order, or other similar instrument that was subjected to custody by this State under Section 4, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(b) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The administrator shall allow the claim if he determines that the other state is entitled to the abandoned property under subsection (a).

(c) The administrator shall require a state, before recovering property under this section, to agree to indemnity this State and its officers and employees against any liability on a claim for the property.

§ 26. [Action to Establish Claim]

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may bring an action to establish the claim in the [ ] court, naming the administrator as a defendant. The action must be brought within [90] days after the decision of the administrator or within [180] days after the filing of the claim if he has failed to act on it. [If the aggrieved person establishes the claim in an action against the administrator, the court shall award him costs and reasonable attorney's fees.]

* * * *

§ 33. [Interstate Agreements and Cooperation; Joint and Reciprocal Actions With Other States]

(a) The administrator may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The administrator by rule may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

(b) To avoid conflicts between the administrator's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the administrator, so far as is consistent with the purposes, policies, and provisions of this Act, before adopting, amending or repealing rules, shall advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

(c) The administrator may join with other states to seek enforcement of this Act against any person who is or may be holding property reportable under this Act.

(d) At the request of another state, the attorney general of this State may bring an action in the name of the administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this State of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.

(e) The administrator may request that the attorney general of another state or any other person bring an action in the name of the administrator in the other state. This State shall pay all expenses including attor-

ney's fees in any action under this subsection. [The administrator may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action.] Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under this Act.

* * * *

B. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT—REVISED 1966 ACT

§ 1. [Definitions and Use of Terms]

As used in this Act, unless the context otherwise requires:

(a) "Banking organization" means any bank, trust company, savings bank [industrial bank, land bank, safe deposit company], or a private banker engaged in business in this state.

(b) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, [cooperative bank] or investment company, engaged in business in this state.

(d) "Holder" means any person in possession of property subject to this Act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this Act.

(e) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this Act, or his legal representative.

(g) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

* * * *

§ 5. [Undistributed Dividends and Distributions of Business Associations]

Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within 7 years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this state; or

(b) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

* * * *

§ 7. [Property Held by Fiduciaries]

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within 7 years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(a) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(b) If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

(c) If it is held in this state by any other person.

* * * *

§ 9. [Miscellaneous Personal Property Held for Another Person]

All intangible personal property, not otherwise covered by this Act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 7 years after it became payable or distributable is presumed abandoned.

§ 10. [Reciprocity for Property Presumed Abandoned or Escheated Under the Laws of Another State]

If specific property which is subject to the provisions of sections 2, 5, 6, 7, and 9 is held for or owed or distributable to an owner whose last known address is in

another state by a holder who is subjected to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

§ 11. [Report of Abandoned Property]

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this Act shall report to the [State Treasurer] with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of [$3.00] or more presumed abandoned under this Act;

(2) in case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under [$3.00] each may be reported in aggregate;

(4) the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) other information which the [State Treasurer] prescribes by rule as necessary for the administration of this Act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The [State Treasurer] may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this Act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this Act shall include all items of property that would have been presumed abandoned if this Act had been in effect during the 10 year period preceding its effective date.

* * * *

§ 13. [Payment or Delivery of Abandoned Property]

Every person who has filed a report under section 11, within [20] days after the time specified in section 12

for claiming the property from the holder, or in the case of sums payable on traveler's checks or money orders presumed abandoned under section 2 within [20] days after the filing of the report, shall pay or deliver to the [State Treasurer] all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 12, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the [State Treasurer], but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

§ 14. [Relief from Liability by Payment or Delivery]

Upon the payment or delivery of abandoned property to the [State Treasurer], the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the [State Treasurer] under this Act is relived of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the [State Treasurer] pursuant to this Act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the [State Treasurer] shall forthwith reimburse the holder for the payment.

C. UNIFORM COMMERCIAL CODE

§ 8-207. Rights and Duties of Issuer With Respect to Registered Owners and Registered Pledgees.

(1) Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(2) Subject to the provisions of subsections (3), (4), and (6), the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(3) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(a) register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(b) register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or

(c) register the release of the security from the existing pledge and register the pledge of the

security to the other pledgee, if the instruction specifies the existing owner and another pledgee.

(5) Continuity of perfection of a security interest is not broken by registration of transfer under subsection (4)(b) or by registration of release and pledge under subsection (4)(c), if the security interest is assigned.

(6) If an uncertificated security is subject to a registered pledge:

(a) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(b) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(c) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(7) Nothing in this Article shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like.

* * * *

§ 9-103. Perfection of Security Interest in Multiple State Transactions.

* * * *

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting

machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or non-perfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction,

or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

* * * *

(6) Uncertificated securities.

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities.

D. MODEL BUSINESS CORPORATION ACT
(1984 Version)

§ 1.40. DEFINITIONS

(21) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

§ 7.07. RECORD DATE

(a) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

§ 7.23. SHARES HELD BY NOMINEES

(a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

(1) the types of nominees to which it applies;

(2) the rights or privileges that the corporation recognizes in a beneficial owner;

(3) the manner in which the procedure is selected by the nominee;

(4) the information that must be provided when the procedure is selected;

(5) the period for which selection of the procedure is effective; and

(6) other aspects of the rights and duties created.

IV. NEW YORK ABANDONED PROPERTY LAW

ARTICLE V—UNCLAIMED PROPERTY HELD OR OWING FOR PAYMENT TO SECURITY HOLDERS

§ 500. Definitions

When used in this article, the following terms shall have the following meanings:

1. (a) "Corporation" shall mean any corporation (other than a public corporation as defined in paragraph (b) of this subdivision), joint stock company, association of two or more individuals, committee, partnership, investment company (as defined by, and which is registered under, an act of Congress of the United States entitled the "Investment Company Act of 1940", as amended), unit investment trust or business trust, whether or not for profit.

(b) "Public corporation" shall mean any state and a public corporation as defined in section sixty-six of the general construction law, but shall not mean an agency or political subdivision of the United States or of a foreign nation.

2. "Security" shall mean:

(a) Any instrument issued by a corporation or public corporation or any entry on the books and records of such corporation or public corporation evidencing an obligation to make any payment of the principal amount of a debt or of any increment due or to become due thereon; or

(b) Any instrument issued by a corporation to evidence a proprietary interest therein or any intangible interest in a corporation as evidenced by the books and records of the corporation except:

(i) A policy of insurance issued by a mutual insurance corporation, or

(ii) A share issued by a savings and loan association, a building and loan association, or a credit union.

For the purposes of this article, an industrial development bond or an industrial revenue bond shall be deemed a security issued by a public corporation.

3. "Domestic corporation" shall mean any corporation organized under the laws of this state or under the laws of this state and one or more other states or foreign countries, but shall not mean a banking organization as defined in this chapter.

4. "Foreign corporation" shall mean any corporation organized under the laws of a state other than New York or under the laws of a foreign country and doing business in this state or authorized to do business in this state, but shall not mean a banking organization as defined in this chapter. "Non-authorized foreign corporation" shall mean any corporation organized under the laws of a state other than New York which is neither doing business nor authorized to do business in this state.

5. "Fiduciary" shall mean any individual or any domestic or foreign corporation holding a security for a resident or receiving, as agent of a corporation or as holder of a security, any amount due or to become due a resident as the holder or owner of a security but shall not mean any individual or corporation so acting by direction of a court in any case where such court has not directed a distribution of such amount or security.

6. "Resident" shall mean:

(a) An individual domiciled in this state;

(b) A domestic corporation;

(c) A banking organization, as defined in section one hundred three of this chapter; and

(d) This state and any public corporation organized under its laws.

7. (a) "Amount" shall include, but is not limited to, any dividend, profit or other distribution, whether in cash

or securities, and any interest or other payment on or of principal, including the cash value of any security which has matured or has been called for full or partial redemption or is payable to security owners or former security owners entitled to payments as the result of a merger, consolidation, acquisition or conversion of any type.

(b) An amount is deemed to be "distributable" or "payable" for the purposes of this article notwithstanding any requirement that a security or other instrument must be presented, exchanged or surrendered, or that an owner must affirmatively make any claim for payment, before actual payment of such amount may be effected.

8. "Wages" shall include moneys payable, under contract or otherwise, for services rendered to a domestic or foreign corporation or fiduciary, including but not limited to payment of salaries, commissions, royalties, expenses, employee benefits, and insurance benefits payable by a corporation pursuant to a self-insurance plan, less lawful deductions.

§ 501. Unclaimed property; when deemed abandoned

1. (a) Any amount which, on or after January first, nineteen hundred forty-seven, shall have become payable or distributable by a domestic, foreign or public corporation or by a fiduciary to a resident as the owner or former owner of a security as defined in paragraph (a) of subdivision two of section five hundred of this article, shall be deemed abandoned when the security with respect to which such amount is payable or distributable has been deemed abandoned, or when such amount:

(i) is payable or distributable to such resident as the owner or former owner of such security; and

(ii) has, on the thirty-first day of December in any year, remained unpaid to or unclaimed by such resident for a period of three years. For the purposes of this article, a security as defined in paragraph (a) of sub-

division two of section five hundred of this article shall not be deemed abandoned until a period of three years has elapsed from the earlier of the maturity date of such security or the date such security has been called for redemption.

(b) Any amount which, on or after January first, nineteen hundred forty-seven shall have become payable or distributable by a domestic or foreign corporation or a fiduciary to a resident as the owner or former owner of a security as defined in paragraph (b) of subdivision two of section five hundred of this article, shall be deemed abandoned when the security with respect to which such amount is payable or distributable has been deemed abandoned or when such amount:

(i) is payable or distributable to such resident as the owner or former owner of such security; and

(ii) has, on the thirty-first day of December in any year, remained unpaid to or unclaimed by such resident for a period of five years.

2. (a) Except as provided in paragraph (b) of this subdivision, any security, as defined in paragraph (b) of subdivision two of section five hundred of this article, of any domestic corporation or foreign corporation owned by or formerly owned by a resident shall be deemed abandoned where, for five successive years:

(i) all amounts, if any, payable or distributable thereon or with respect thereto have remained unpaid to or unclaimed by such resident, and

(ii) no written communication has been received from such resident by the holder.

(b) (i) Any security, as defined in paragraph (b) of subdivision two of section five hundred of this article, of any domestic or foreign corporation in which a resident has an ownership interest and which is enrolled in a plan that provides for the automatic reinvestment of dividends,

distributions, or other sums payable as the result of such interest shall be deemed abandoned when any security owned by such resident which is not enrolled in the plan has been deemed abandoned pursuant to paragraph (a) of this subdivision or when, for five successive years:

(1) all amounts, if any, payable thereon or with respect thereto have remained unpaid to or unclaimed by such resident, and

(2) no written communication has been received from such resident by the holder, and

(3) the holder does not know the location of such resident at the end of such five year period.

(ii) For purposes of this paragraph, the reinvestment of any dividend, distribution or other sum payable shall not be considered as payment of an amount for the purpose of extending the statutory period of inactivity after the expiration of which securities enrolled in a reinvestment plan are deemed abandoned.

(iii) Any corporation or fiduciary holding or evidencing on its books and records securities enrolled in a reinvestment plan shall notify the apparent owner by certified mail that such securities will be delivered to the state comptroller as abandoned property, pursuant to the provisions of section five hundred two of this article, unless such corporation or fiduciary receives written communication from the apparent owner of such securities indicating knowledge of such securities prior to the date that such securities are required to be delivered to the state comptroller. Such letter by certified mail shall be sent during the calendar year prior to the year in which such property would be required to be delivered to the state comptroller, but no later than the thirty-first day of December of such year. For purposes of this subdivision, a signed return receipt shall constitute written communication received by the holder from the apparent owner.

(iv) All corporations or fiducaries holding or evidencing on its books and records securities enrolled in a reinvestment plan shall retain, for a period of five years following the thirty-first day of December of the year for which a report of abandoned property has been filed, a list of (1) the dates and nature of any and all corporate notices which have been sent via first class mail to owners of such securities during the period to which such report relates, and (2) the names and addresses of all owners of such securities for whom postal authorities have returned any first class mail sent by the holder during the period to which such report relates, and the dates on which such mail was returned for each such owner. Nothing contained herein or in any other provision of this chapter shall preclude the state comptroller, in the performance of his duties under this chapter, from verifying that all such notices have been sent and whether or not such notices have been returned to the holder by the postal authorities.

3. Any wages payable on or after July first, nineteen hundred sixty-three by a domestic or foreign corporation and held for a resident by such issuing corporation or held and payable by a fiduciary other than a broker or dealer as defined in section five hundred ten of this chapter for a resident shall be deemed to be abandoned property, where for three successive years:

(a) All such wages have remained unpaid to such resident, and

(b) No written communication has been received from such resident by the holder, and

(c) Notice regarding such wages has been sent by the corporation or fiduciary, via first class mail, to such resident at his last known address and such notice has been returned to the corporation or fiduciary by the postal authorities for inability to locate such resident.

4. For the purposes of this section the holder or owner of a security or payee of an amount or a payee of wages

shall be deemed to be a resident when the records of the corporation or fiduciary indicate that the last known address of such holder, owner or payee is located within this state or, if the security was issued or the amount or wages were payable by a domestic corporation or a public corporation organized under the laws of this state, when such records do not indicate a last known address outside this state or when the address of such holder, owner or payee is unknown to such corporation or public corporation or fiduciary; or when the address of such holder, owner or payee is in a state not having a law relating to the disposition of abandoned property; or when the address of such holder, owner or payee is in a foreign country.

5. Any amount, wages or security with respect to which such domestic or foreign corporation or public corporation or fiduciary has on file written evidence received within the period specified for determining abandonment of such property that the person entitled to such amount or wages or for whom such security is held had knowledge thereof shall not be deemed abandoned property.

§ 502. Payment or delivery of abandoned property

1. In the month of March in each year, and on or before the tenth day thereof, every domestic or foreign corporation or public corporation or fiduciary shall pay or deliver to the state comptroller all property which on the preceding thirty-first day of December was deemed abandoned pursuant to section five hundred one excepting such property as since that date has ceased to be abandoned.

2. Where any security delivered to the state comptroller pursuant to subdivision one hereof, is delivered by him to the issuing corporation, the security shall be transferred to him on the books of the corporation and a certificate registered in the name of the state comptroller shall be delivered to him or, if so requested by the comp-

troller, such corporation shall register such securities in book entry form in the name of the comptroller. The corporation and its transfer agent, registrar or other person acting for or on behalf of the corporation in executing or delivering any such certificate or registering such securities shall be relieved from liability to any person for any losses or damages resulting from the issuance and delivery to the state comptroller of such certificate or registration of such securities.

§ 503. Report of abandoned property

Each payment or delivery of abandoned property pursuant to section five hundred two shall be accompanied by a verified written report, in such form as the state comptroller shall prescribe, setting forth:

(a) The name and last known address, if any, of the person appearing to be entitled to such abandoned property;

(b) A description of such abandoned property;

(c) The number of shares represented or the face amount of the security;

(d) The amount of any principal, dividend, interest or other increment due thereon;

(e) The date such amount was demandable or payable; and

(f) Such other identifying information as the state comptroller may require.

§ 504. Reimbursement for property paid or delivered

A domestic or foreign corporation or public corporation or a fiduciary which has paid or delivered to the state comptroller abandoned property pursuant to section five hundred two may make payment to the person entitled thereto, and may file claim for reimbursement for such payment by the state comptroller, who shall, upon

satisfactory proof of such payment and after audit, reimburse such domestic or foreign corporation or public corporation or fiduciary. In no event, however, shall such reimbursement exceed the amount to which the claimant is entitled pursuant to subdivision two of section fourteen hundred three of this chapter.

ARTICLE V-A—UNCLAIMED PROPERTY HELD BY BROKERS

§ 510. Definitions

When used in this article, the following items shall have the following meanings:

1. "Corporation" shall include any joint stock company, corporation, association of two or more individuals, committee, public authority, or business trust.

2. "Public issuer" shall include the United States, the several states and territories thereof, political subdivisions and municipal corporations within such states and territories, foreign countries and political subdivisions and municipal corporations within such foreign countries.

3. "Security" shall include:

(a) Any instrument issued by a corporation or public issuer to evidence an obligation to make any payment of the principal amount of a debt or of any increment due or to become due thereon, or

(b) Any instrument issued by a corporation to evidence a proprietary interest therein except:

(i) A policy of insurance issued by a mutual insurance corporation, or

(ii) A share issued by a savings and loan association, a building and loan association, or a credit union.

4. "Broker" shall include any individual or corporation engaging in the purchase, sale or exchange of securities for or on behalf of any customer.

5. "Dealer" shall include any individual or corporation engaging in any state as a regular business in the purchase, sale or exchange of securities for his or its own account, through a broker or otherwise.

6. (a) "Customer" shall include any individual or corporation entering into a contract with a broker or dealer by which such broker or dealer agrees to effect the purchase, sale, or exchange, or to keep custody of any security for or on behalf of such individual or corporation. The term "customer" shall also include any individual or corporation entering into a contract with a broker or dealer whereby such broker or dealer for his own account buys from or sells to such individual or corporation, any security.

(b) If on the books of account located at an office in this state of a broker or dealer there is indicated a balance to the credit of an individual or corporation with a last-known address in a state other than this state, such individual or corporation shall not be deemed a "customer".

7. "Amount" shall mean that term as defined in subdivision seven of section five hundred of this chapter.

8. "Wages" shall include moneys payable, under contract or otherwise, for services rendered to a broker or dealer, less lawful deductions.

§ 511. Unclaimed property; when deemed abandoned

The following unclaimed property shall be deemed abandoned property:

1. Any amount (a) received in this state after June thirtieth, nineteen hundred forty-six by a broker or dealer or nominee of such broker or dealer as the holder of record of a security remaining unpaid to the person entitled thereto for three years following the receipt thereof, or (b) when paid to such broker, dealer or nominee on or with respect to a security which has been deemed abandoned.

1-a. Any amount (a) received in this state on or after July first, nineteen hundred seventy-four by a broker or dealer or nominee of such broker or dealer other than as the holder of record of a security remaining unpaid to the person entitled thereto for three years following the receipt thereof, or (b) when paid to such broker, dealer or nominee on or with respect to a security which has been deemed abandoned.

2. Any amount (a) received in this state after June thirtieth, nineteen hundred forty-six due from a broker or dealer or nominee of such broker or dealer to a customer which has remained unpaid to the customer for three years after the date of the last entry, other than the receipt of dividends or interest in the account of such broker, dealer or nominee with such customer, or (b) payable on or with respect to a security which has been deemed abandoned.

3. Any security held in this state by a broker or dealer, or nominee of such broker or dealer, as the holder of record of a security for a customer or for a person or persons unknown to such broker or dealer or nominee where, for three successive years, all amounts paid thereon or with respect thereto and received after June thirtieth, nineteen hundred forty-six by such broker or dealer or nominee have remained unclaimed.

Provided, however, that if any amount or security specified in subdivision one, two or three of this section is reflected, recorded or included in an account with respect to which such broker or dealer has on file evidence in writing received within the three years immediately preceding the thirty-first day of December preceding the date such amount or security would otherwise be payable or deliverable pursuant to section five hundred twelve that the person entitled thereto had knowledge of such account, then such amount or security shall not be deemed abandoned property.

4. Any security held by a broker or dealer or nominee of such broker or dealer reflected, recorded, or included in an account with respect to which, for three successive years, all statements of account or other communications which have been sent, via first class mail, to the customer at his last known address have been returned to such broker, dealer or nominee by the postal authorities for inability to locate the customer, and no written communication has been received from the customer by such broker, dealer or nominee, provided such security was received or is held in this state by such broker, dealer or nominee or the last known address of the customer is located in this state.

5. Any wages held and payable on or after July first, nineteen hundred sixty-six by a broker or dealer, as defined in section five hundred ten of this article, for the benefit of a person or persons, known or unknown, shall be deemed to be abandoned property, where for three successive years:

(a) All such wages have remained unpaid to such person, and

(b) No written communication has been received from such person by the holder, and

(c) Notice regarding such wages, if sent by the broker or dealer, via first class mail, to such person at his last known address has been returned to the broker or dealer by the postal authorities for inability to locate such person.

6. Any broker or dealer who satisfies the requirements of this subdivision may determine the property which on the thirty-first day of December in the years nineteen hundred seventy-two, nineteen hundred seventy-three, nineteen hundred seventy-four and nineteen hundred seventy-five shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the years nineteen hundred sixty-seven, nineteen hundred sixty-eight, nineteen hundred sixty-nine, and nineteen

hundred seventy by the method hereinafter in this subdivision described and the amount so determined as at any such date shall be deemed to be all of such abandoned property held by such broker or dealer pursuant to subdivisions one and three of this section on such date.

The broker or dealer shall compute separately for each of the years nineteen hundred sixty-five and nineteen hundred sixty-six (each of which years is referred to in this subdivision as a "base year") the total value of all stock and cash dividends received by such broker or dealer, or nominee of such broker or dealer, in this state during such year as the holder of record of a security. The value of any dividend paid in stock shall be the mean price of such stock during the calendar month in which the dividend was received as reported by any generally recognized statistical service or, if not so reported, as established in any other manner satisfactory to the state comptroller. The total value of all such stock and cash dividends thus determined for each base year shall be the denominator for that base year. The broker or dealer shall then determine the total value of all such dividends received during each base year belonging to unknown owners as reported to the state comptroller, or as required to be so reported pursuant to this article, which continued to be held by such broker or dealer, or nominee of such broker or dealer, unpaid to the person entitled thereto on the December thirty-first occurring five years after the close of such base year. To the extent any such dividends which continued to be so held unpaid on any such December thirty-first consisted of stock, such stock shall be valued at the mean price of such stock during the calendar month ending on such December thirty-first as reported by any generally recognized statistical service or, if not so reported, as established in any other manner satisfactory to the state comptroller. The total value of such remaining dividends thus determined for each

base year shall be the numerator for that base year. The sum of the numerators for the base years shall be divided by the sum of the denominators for the base years and the result thus obtained shall be multiplied by two. The product obtained as the result of such multiplication shall be the average factor of such broker or dealer.

In order to determine the property which on the thirty-first day of December, nineteen hundred seventy-two shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-seven the broker or dealer shall determine (i) the total value of all stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-seven as the holder of record of a security and shall multiply such total value by the average factor of such broker or dealer, (ii) the aggregate amount of stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during ninteen hundred sixty-seven as the holder of record of a security for a person or persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-two in covering stock and cash dividends which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-seven but, according to the books and records of such broker or dealer, were not received, and (iii) the aggregate amount of interest payments received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-seven on securities held for persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-two in covering interest payments which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-

seven but, according to the books and records of such broker or dealer, were not received. The greater of the two amounts determined pursuant to clauses (i) and (ii) of the preceding sentence, plus the amount determined pursuant to clause (iii) of such sentence, shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-seven on the thirty-first day of December nineteen hundred seventy-two.

In order to determine the property which on the thirty-first day of December, nineteen hundred seventy-three shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-eight the broker or dealer shall determine (i) the total value of all stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-eight as the holder of record of a security and shall multiply such total value by the average factor of such broker or dealer, (ii) the aggregate amount of stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-eight as the holder of record of a security for a person or persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-three in covering stock and cash dividends which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-eight but, according to the books and records of such broker or dealer, were not received, and (iii) the aggregate amount of interest payments received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-eight on securities held for persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-

first day of December, nineteen hundred seventy-three in covering interest payments which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-eight but, according to the books and records of such broker or dealer, were not received. The greater of the two amounts determined pursuant to clauses (i) and (ii) of the preceding sentence, plus the amount determined pursuant to clause (iii) of such sentence, shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-eight on the thirty-first day of December, nineteen hundred seventy-three.

In order to determine the property which on the thirty-first day of December, nineteen hundred seventy-four shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-nine the broker or dealer shall determine (i) the total value of all stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-nine as the holder of record of a security and shall multiply such total value by the average factor of such broker or dealer, (ii) the aggregate amount of stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, ~~in~~ this state during nineteen hundred sixty-nine as the holder of record of a security for a person or persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-four in covering stock and cash dividends which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-nine but, according to the books and records of such broker or dealer, were not received, and (iii) the aggregate amount of interest payments received by such broker or dealer, or nominee of such broker or dealer, in

this state during nineteen hundred sixty-nine on securities held for persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-four in covering interest payments which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-nine but, according to the books and records of such broker or dealer, were not received. The greater of the two amounts determined pursuant to clauses (i) and (ii) of the preceding sentence, plus the amount determined pursuant to clause (iii) of such sentence, shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-nine on the thirty-first day of December nineteen hundred seventy-four.

In order to determine the property which on the thirty-first day of December, nineteen hundred seventy-five shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred seventy the broker or dealer shall determine (i) the total value of all stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred seventy as the holder of record of a security and shall multiply such total value by the average factor of such broker or dealer, (ii) the aggregate amount of stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred seventy as the holder of record of a security for a person or persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-five in covering stock and cash dividends which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred seventy but, according to the books and records of

such broker or dealer, were not received, and (iii) the aggregate amount of interest payments received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-nine on securities held for persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-five in covering interest payments which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred seventy but, according to the books and records of such broker or dealer, were not received. The greater of the two amounts determined pursuant to clauses (i) and (ii) of the preceding sentence, plus the amount determined pursuant to clause (iii) of such sentence, shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred seventy on the thirty-first day of December, nineteen hundred seventy-five.

Each broker or dealer which uses the procedure described above in this subdivision shall maintain for a period of not less than six years commencing January first, nineteen hundred seventy-two, books and records evidencing the receipt of dividends in this state for each of the base years, and the payment thereof over the five years succeeding each base year.

Any broker or dealer who chooses to determine the property which on the thirty-first day of December in the years nineteen hundred seventy-two or nineteen hundred seventy-three shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the years nineteen hundred sixty-seven or nineteen hundred sixty-eight by the method described in this subdivision shall thereafter determine the property which on the thirty-first day of December in each subsequent year ending not later than December thirty-first, nineteen hundred seventy-five shall be deemed abandoned property

pursuant to subdivisions one and three of this section relating to a year not later than nineteen hundred seventy by the method described in this subdivision. No broker or dealer may choose to determine the property which on the thirty-first day of December in the years nineteen hundred seventy-four or nineteen hundred seventy-five shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the years nineteen hundred sixty-nine or nineteen hundred seventy by the method described in this subdivision unless such broker or dealer shall have used the method described in this subdivision to determine the property which on the thirty-first day of December in the year nineteen hundred seventy-three shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-eight.

The method of determining abandoned property pursuant to subdivisions one and three of this section as described in this subdivision shall be available only to such brokers or dealers as have made written reports pursuant to section five hundred thirteen in each of the years nineteen hundred seventy-one and nineteen hundred seventy-two covering each of the base years.

In the event that an audit of a broker or dealer by the state comptroller establishes that one or more of the dollar values determined by the broker or dealer for the purpose of computing the average factor of such broker or dealer pursuant to this subdivision was incorrect, the corrected average factor of such broker or dealer established as a result of such audit shall be determined to be the average factor required to be used by such broker or dealer in determining abandoned property pursuant to this subdivision.

Any broker or dealer who does not determine abandoned property pursuant to subdivisions one and three of this section by the method described in this subdivision and who during any of the calendar years nineteen hundred

sixty-seven, nineteen hundred sixty-eight, nineteen hundred sixty-nine or nineteen hundred seventy received in this state any stock dividend as the holder of record of a security for a person or persons unknown to such broker or dealer and who sold any such stock dividend during any such or subsequent calendar year, shall pay the proceeds of such sale to the state comptroller not later than the thirty-first day of December, nineteen hundred seventy-three and such proceeds shall, for all purposes of this chapter be deemed abandoned property on the thirty-first day of December of the calendar year during which such sale takes place.

§ 512. Payment or delivery of abandoned property

1. In the month of March of each year, and on or before the tenth day thereof, every broker or dealer shall pay or deliver to the state comptroller all property which on the preceding thirty-first day of December was deemed abandoned property pursuant to section five hundred eleven excepting such property as since that date has ceased to be abandoned.

2. Where any security delivered to the state comptroller pursuant to subdivision one hereof, is delivered by him to the issuing corporation, the security shall be transferred to him on the books of the corporation and a certificate registered in the name of the state comptroller shall be delivered to him. The corporation and its transfer agent, registrar or other person acting for or on behalf of the corporation in executing or delivering such certificate shall be relieved from liability to any person for any losses or damages resulting from the issuance and delivery to the state comptroller of such certificate.

§ 513. Report to accompany payment or delivery

A payment or delivery pursuant to section five hundred twelve shall be accompanied by a verified written report, in such form as the state comptroller may prescribe, setting forth:

1. With reference to any amount specified in subdivision one of section five hundred eleven,

(a) A description of the security,

(b) The number of shares represented or the face amount of the security,

(c) The date the dividend or interest was payable, and

(d) Such other information as the state comptroller may require.

2. With reference to any amount specified in subdivision two of section five hundred eleven,

(a) The name and last known address, if any, of the customer entitled to such amount,

(b) The date of the last entry, other than the credit of interest or dividends, in the account in which such amount is reflected, recorded or included, and

(c) Such other information as the state comptroller may require.

3. With reference to any security specified in subdivision three or four of section five hundred eleven,

(a) A description of the abandoned security,

(b) The number of shares represented or the face amount of the security,

(c) The name and last known address, if any, of the person appearing to be entitled to such abandoned property, and

(d) Such other information as the state comptroller may require.

4. In case any broker or dealer shall on the thirty-first day of December in any year neither hold nor owe any abandoned property specified in section five hundred eleven, such broker or dealer shall on or before the tenth

day of March next succeeding make a verified written report to the State Comptroller so stating.

5. In case any broker or dealer determines the property which shall be deemed abandoned property pursuant to subdivisions one and three of section five hundred eleven by the method provided in subdivision six of that section, the payment of such abandoned property shall be accompanied by a verified written report, in such form as the state comptroller may prescribe, which, among other things, shall set forth the computation of the average factor of such broker or dealer pursuant to subdivision six of section five hundred eleven. Each verified written report accompanying the payment of abandoned property determined pursuant to subdivision six of section five hundred eleven shall contain an undertaking by the broker or dealer making such payment to honor all claims to the extent herein provided whenever made against such broker or dealer by any person determined by him or proved to be entitled to receive from him a stock or cash dividend received in this state during the calendar year covered by such report as the holder of record of a security or an interest payment on a security received in this state during such year. Such undertaking shall obligate the broker or dealer to honor any such claim provided that the payment of abandoned property relating to the year in question determined pursuant to subdivision six of section five hundred eleven made by such broker or dealer to the state comptroller has been exhausted as a result of reimbursements by the state comptroller to the broker or dealer or to other persons claiming such abandoned property as provided in subdivision two of section five hundred fourteen. To the extent related to any stock dividend, any such claim shall not exceed the fair market value of such stock dividend on the thirty-first day of December of the year in which such stock dividend was deemed abandoned property.

§ 513-a. Retention of books and records

1. Every broker or dealer shall retain the books and records set forth in subdivision two of this section relating to the years nineteen hundred sixty-seven, nineteen hundred sixty-eight, nineteen hundred sixty-nine and nineteen hundred seventy for a period of ten years following the end of the year in which created; shall retain all such books and records relating to the year nineteen hundred seventy-one for a period of nine years following the close of nineteen hundred seventy-one; and shall retain all such books and records relating to any subsequent calendar year for a period of ten years following the end of the year in which created. The books and records so retained shall be made available to the state comptroller upon his request in the performance of his duties under this chapter.

2. The following books and records shall be those referred to in subdivision one of this section: general ledgers, customers ledgers; daily and weekly stock position records; dividend sheets; cash blotters; purchase and sales blotters; daily journals; bank reconciliations; cancelled checks; claim letters; independent auditor's reports; trial balances; private ledgers; financial statements and supporting data; chart of accounts; and copies of abandoned property reports.

§ 514. Reimbursement of brokers or dealers

1. A broker or dealer which has paid or delivered to the state comptroller abandoned property pursuant to section five hundred twelve may elect to make payment to the person entitled thereto. A broker or dealer making such payment may file claim for reimbursement by the state comptroller. The state comptroller upon satisfactory proof of such payment shall, after audit, reimburse such broker or dealer. In no event, however, shall such reimbursement exceed the amount to which the claimant is entitled pursuant to subdivision two of section fourteen hundred three of this chapter.

2. A broker or dealer which has paid to the state comptroller abandoned property relating to any of the years nineteen hundred sixty-seven, nineteen hundred sixty-eight, nineteen hundred sixty-nine or nineteen hundred seventy, determined pursuant to subdivision six of section five hundred eleven, may elect thereafter to make payment to a person entitled to receive (i) a stock or cash dividend received in this state during any such year by such broker or dealer, or nominee of such broker or dealer, as the holder of record of a security, or (ii) an interest payment on a security received in this state during any such year by such broker or dealer, or nominee of such broker or dealer. A broker or dealer making any such payment may file claim for reimbursement by the state comptroller. Subject to the provisions of this subdivision, the state comptroller upon satisfactory proof that a broker or dealer has made payment to the person entitled thereto shall, after audit of such claim, reimburse such broker or dealer. In no event shall the amount or amounts reimbursed by the state comptroller to a broker or dealer relating to any of the years nineteen hundred sixty-seven, nineteen hundred sixty-eight, nineteen hundred sixty-nine or nineteen hundred seventy, plus amounts paid by the state comptroller to any person claiming such abandoned property relating to any of such years, exceed the amount paid by the broker or dealer to the state comptroller pursuant to subdivision six of section five hundred eleven relating to such year. In no event shall the amount paid by the state comptroller to any person claiming a stock dividend received by a broker or dealer, or nominee of such broker or dealer, in any of such years, or to a broker or dealer in reimbursement of any such claim paid by such broker or dealer, exceed the value of such stock dividend as most recently reported by any generally recognized statistical service on the thirty-first day of December of the year in which such stock was deemed abandoned property.

V. SEC RULES

A. RULES UNDER SECTION 14, SECURITIES EXCHANGE ACT OF 1934

* * * *

14a-7 Mailing communications for security holders.

If the registrant has made or intends to make any solicitation subject to this regulation, the registrant shall perform such of the following acts as may be duly requested in writing with respect to the same subject matter or meeting by any security holder who is entitled to vote on such matter or to vote at such meeting and who shall defray the reasonable expenses to be incurred by the registrant in the performance of the act or acts requested.

(a) The registrant shall mail or otherwise furnish to such security holder the following information as promptly as practicable after the receipt of such request:

(1) A statement of the approximate number of holders of record of any class of securities, any of the holders of which have been or are to be solicited on behalf of the registrant, or any group of such holders which the security holder shall designate.

(2) If the registrant has made or intends to make, through bankers, brokers or other persons any solicitation of the beneficial owners of securities of any class, a statement of the approximate number of such beneficial owners, or any group of such owners which the security holder shall designate.

(3) An estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to such holders, including insofar as known or reasonably available, the estimated handling and mailing costs of the bankers, brokers or other persons specified in paragraph (a)(2) of this section.

(b)(1) Copies of any proxy statement, form of proxy or other communication furnished by the security holder

shall be mailed by the registrant to such of the holders of record specified in paragraph (a)(1) of this section as the security holder shall designate. The registrant shall also mail to each banker, broker, or other person specified in paragraph (a)(2) of this section a sufficient number of copies of such proxy statement, form of proxy or other communication as will enable the banker, broker, or other person to furnish a copy thereof to each beneficial owner solicited or to be solicited through him.

(2) Any such material which is furnished by the security holder shall be mailed with reasonable promptness by the registrant after receipt of a tender of the material to be mailed, of envelopes or other containers therefor and of postage or payment for postage. The registrant need not, however, mail any such material which relates to any matter to be acted upon at an annual meeting of security holders prior to the earlier of (i) a day corresponding to the first date on which the registrant proxy soliciting material was released to security holders in connection with the last annual meeting of security holders, or (ii) the first day on which solicitation is made on behalf of the registrant. With respect to any such material which relates to any matter to be acted upon by security holders otherwise than at an annual meeting, such material need not be mailed prior to the first day on which solicitation is made on behalf of the registrant.

(3) The registrant shall not be responsible for such proxy statement, form of proxy or other communication.

(c) In lieu of performing the acts specified in paragraphs (a) and (b) of this section, the registrant may at its option, furnish promptly to such security holder a reasonably current list of the names and addresses of such of the holders of record specified in paragraph (a)(1) of this section as the security holder shall designate, and a list of the names and addresses of such of the bankers, brokers or other persons specified in paragraph (a)(2) of this section as the security holder shall

designate together with a statement of the approximate number of beneficial owners solicited or to be solicited through each such banker, broker or other person and a schedule of the handling and mailing costs of each such banker, broker or other person if such schedule has been supplied to the registrant. The foregoing information shall be furnished promptly upon the request of the security holder or at daily or other reasonable intervals as it becomes available to the registrant.

* * * *

14a-13 Obligation of registrants in communicating with beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the registrant intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, voting trustee, bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the registrant shall:

(1) By first class mail or other equally prompt means:

(i) Inquire of each such record holder:

(A) Whether other persons are the beneficial owners of such securities and if so, the number of copies of the proxy and other soliciting material necessary to supply such material to such beneficial owners;

(B) In the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such report to beneficial owners to whom such reports are to be distributed by such record holder or its nominee and not by the registrant;

(C) If the record holder has an obligation under Rule 14b-1(b)(3) or Rule 14b-2(b)(4)(ii) and (iii), whether an agent has been designated to act on its behalf

in fulfilling such obligation and, if so, the name and address of such agent; and

(D) Whether it holds the registrant's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank; and

(ii) Indicate to each such record holder:

(A) Whether the registrant, pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to Rule 14b-1(b)(3) and Rule 14b-2(b)(4)(ii) and (iii);

(B) The record date; and

(C) At the option of the registrant, any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to Rule 14b-2(b)(1)(i) the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however*, the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

(3) Make the inquiry required by paragraph (a)(1) of this section at least 20 business days prior to the record date of the meeting of security holders, or

(i) If such inquiry is impracticable 20 business days prior to the record date of a special meeting, as many days before the record date of such meeting as is practicable or,

(ii) If consents or authorizations are solicited, and such inquiry is impracticable 20 business days before the earliest date on which they may be used to effect corporate action, as many days before that date as is practicable, or

(iii) At such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; *Provided, however,* That if a record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s); and

(4) Supply, in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a)(1) and (a)(2) of this section are made with copies of the proxy, other proxy soliciting material, and/or the annual report to security holders, in such quantities, assembled in such form and at such place(s), as the record holder or respondent bank may reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with proxy soliciting material and/or annual reports to security holders pursuant to paragraph (a)(4) of this section, pay its reasonable expenses for completing the mailing of such material to beneficial owners.

NOTE 1: If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to Section 17A of the Act (e.g., "Cede & Co.," nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold securities on behalf of a beneficial owner or respondent

bank, and shall comply with the above paragraph with respect to any such participant (*see* Rule 14a-1(i)).

NOTE 2: The attention of registrants is called to the fact that each broker, dealer, bank, association and other entity that exercises fiduciary powers has an obligation pursuant to Rule 14b-1 and Rule 14b-2 (except as provided therein with respect to exempt employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) proxies (or in lieu thereof requests for voting instructions) and proxy soliciting materials to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to all beneficial owners on whose behalf it holds securities, unless the registrant has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses and securities positions are disclosed pursuant to Rules 14b-1(c) and 14b-1(b)(3) and Rule 14b-2(b)(4)(ii) and (iii).

NOTE 3: The attention of registrants is called to the fact that registrants have an obligation, pursuant to paragraph (d) of this section, to cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

(b) Any registrant requesting pursuant to Rule 14b-1 (b)(3) and Rule 14b-2(b)(4)(ii) and (iii) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) By first class mail or other equally prompt means, inquire of each record holder and each respondent bank identified to the registrant pursuant to Rule 14b-2(b)(4)(i) whether such record holder or respondent bank

holds the registrant's securities on behalf of any respondent banks and, if so, the name and address of each such respondent bank;

(2) Request such list to be compiled as of a date no earlier than five business days after the date the registrant's request is received by the record holder or respondent bank; *Provided, however,* That if the record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such requests, the request shall be made to such designated office(s) or department(s);

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercises fiduciary powers; *Provided however,* such request shall not cover beneficial owners of exempt employee benefit plan securities as defined in Rule 14a-1(d)(1); and, at the option of the registrant, such request may give notice of any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(4) Use the information furnished in response to such request exclusively for purposes of corporate communications; and

(5) Upon the request of any record holder or respondent bank to whom such request is made, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

NOTE: A registrant will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A registrant, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to Rule 14b-1(b)(3) and Rule 14b-2(b)(4)(ii) and (iii), provided that such registrant notifies the record holders and respondent banks, at the time it makes the inquiry required by paragraph (a) of this section, that the registrant will mail the annual report to security holders to the beneficial owners so identified.

(d) If a registrant solicits proxies, consents or authorizations from record holders and respondent banks who hold securities on behalf of beneficial owners, the registrant shall cause proxies (or in lieu thereof requests or voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

* * * *

14b-1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meanings as in the Act and, with respect to proxy soliciting material, as in Rule 14a-1 thereunder and, with respect to information statements, as in Rule 14c-1 thereunder. In addition, as used in this section, the term "registrant" means:

(1) The issuer of a class of securities registered pursuant to Section 12 of the Act; or

(2) An investment company registered under the Investment Company Act of 1940.

(b) *Dissemination and Beneficial Owner Information Requirements.* A broker or dealer registered under Sec-

tion 15 of the Act shall comply with the following requirements for disseminating certain communications to beneficial owners and providing beneficial owner information to registrants:

(1) The broker or dealer shall respond, by first class mail or other equally prompt means, directly to the registrant no later than seven business days after the date it receives an inquiry made in accordance with Rule 14a-13(a) or Rule 14c-7(a) by indicating, by means of a search card or otherwise:

(i) The approximate number of its customers who are beneficial owners of the registrant's securities that are held of record by the broker, dealer or its nominee;

(ii) The number of its customers who are beneficial owners of the registrant's securities who have objected to disclosure of their names, addresses and securities positions if the registrant has indicated, pursuant to Rule 14a-13(a)(1)(ii)(A) or Rule 14c-7(a)(1)(ii)(A), that it will distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to paragraph (c) of this section; and

(iii) The identity of its designated agent, if any, acting on its behalf in fulfilling its obligations under paragraph (b)(3) of this section;

Provided, however, That if the broker or dealer has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, receipt for purposes of paragraph (b)(1) of this section shall mean receipt by such designated office(s) or department(s).

(2) The broker or dealer shall, upon receipt of the proxy, other proxy soliciting material, and/or annual reports to security holders, forward such materials to its customers who are beneficial owners of the registrant's

securities no later than five business days after the receipt of the proxy material or annual reports.

(3) The broker or dealer shall, through its agent or directly:

(i) Provide the registrant, upon the registrant's request, with the names, addresses and securities positions, compiled as of a date specified in the registrant's request which is no earlier than five business days after the date the registrant's request is received, of its customers who are beneficial owners of the registrant's securities and who have not objected to disclosure of such information; *Provided, however*, that if the broker or dealer has informed the registrant that a designated office(s) or department(s) is to receive such requests, receipt shall mean receipt by such designated office(s) or department(s); and

(ii) transmit the data specified in paragraph (b)(3)(i) of this section to the registrant no later than five business days after the record date or other date specified by the registrant.

NOTE 1: Where a broker or dealer employs a designated agent to act on its behalf in performing the obligations imposed on the broker or dealer by paragraph (b)(3) of this section, the five business day time period for determining the date as of which the beneficial owner information is to be compiled is calculated from the date the designated agent receives the registrant's request. In complying with the registrant's request for beneficial owner information under paragraph (b)(3) of this section, a broker or dealer need only supply the registrant with the names, addresses and securities positions of non-objecting beneficial owners.

NOTE 2: If a broker or dealer receives a registrant's request less than five business days before the requested compilation date, it must provide a list compiled as of a date that is no more than five business days after receipt and transmit the list within five business days after the compilation date.

(c) *Exceptions to Dissemination and Beneficial Owner Information Requirements.* A broker or dealer registered under Section 15 of the Act shall be subject to the following with respect to its dissemination and beneficial owner information requirements:

(1) With regard to beneficial owners of exempt employee benefit plan securities, the broker or dealer shall:

(i) Not include information in its response pursuant to paragraph (b)(1) of this section or forward proxies (or in lieu thereof requests for voting instructions), proxy soliciting material, or annual reports to security holders pursuant to paragraph (b)(2) of this section to such beneficial owners; and

(ii) Not include in its response pursuant to paragraph (b)(3) of this section data concerning such beneficial owners.

(2) A broker or dealer need not satisfy

(i) its obligations under paragraphs (b)(2) and (b)(3) of this section if a registrant does not provide assurance of reimbursement of the broker's or dealer's reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2) and (b)(3) of this section;

(ii) its obligation under paragraph (b)(2) of this section to forward annual reports to non-objecting beneficial owners identified by the broker or dealer, through its agent or directly, pursuant to paragraph (b)(3) of this section if the registrant notifies the broker or dealer pursuant to Rule 14a-13(c) or 14c-7(c) that the registrant will mail the annual report to such non-objecting beneficial owners, identified by the broker or dealer and delivered in a list to the registrant pursuant to paragraph (b)(3) of this section.

14b-2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meanings as in the Act and, with respect to proxy soliciting material, as in Rule 14a-1 thereunder and, with respect to information statements, as in Rule 14c-1 thereunder. In addition, as used in this section, the following terms shall apply:

(1) The term "bank" means a bank, association, or other entity that exercises fiduciary powers.

(2) The term "beneficial owner" includes any person who has or shares, pursuant to an instrument, agreement, or otherwise, the power to vote, or to direct the voting of a security.

Notes. 1. If more than one person shares voting power, the provisions of the instrument creating that voting power shall govern with respect to whether consent to disclosure of beneficial owner information has been given.

2. If more than one person shares voting power or if the instrument creating that voting power provides that such power shall be exercised by different persons depending on the nature of the corporate action involved, all persons entitled to exercise such power shall be deemed beneficial owners; *provided, however,* that only one such beneficial owner need be designated among the beneficial owners to receive proxies or requests for voting instructions, other proxy soliciting material, information statements, and/or annual reports to security-holders, if the person so designated assumes the obligation to disseminate, in a timely manner, such materials to the other beneficial owners.

(3) The term "registrant" means:

(i) The issuer of a class of securities registered pursuant to Section 12 of the Act; or

(ii) An investment company registered under the Investment Company Act of 1940.

(b) *Dissemination and Beneficial Owner Information Requirements.* A bank shall comply with the following requirements for disseminating certain communications to beneficial owners and providing beneficial owner information to registrants:

(1) The bank shall: (i) respond, by first class mail or other equally prompt means, directly to the registrant no later than one business day after the date it receives an inquiry made in accordance with Rule 14a-13(a) or Rule 14c-7(a) by indicating the name and address of each of its respondent banks that holds the registrant's securities on behalf of beneficial owners, if any, and

(ii) respond, by first class mail or other equally prompt means, directly to the registrant no later than seven business days after the date it receives an inquiry made in accordance with Rule 14a-13(a) or Rule 14c-7(a) by indicating, by means of a search card or otherwise:

(A) The approximate number of beneficial owners of the registrant's securities;

(B) If the registrant has indicated, pursuant to Rule 14a-13(a)(1)(ii)(A) or Rule 14c-7(a)(1)(ii)(A), that it will distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to paragraphs (b)(4)(ii) and (iii) of this section:

(*1*) With respect to customer accounts opened on or before December 28, 1986, the number of beneficial owners of the registrant's securities who have affirmatively consented to disclosure of their names, addresses and securities positions; and

(*2*) With respect to customer accounts opened after December 28, 1986, the number of beneficial owners of

the registrant's securities who have not objected to disclosure of their names, addresses and securities positions; and

(C) The identity of its designated agent, if any, acting on its behalf in fulfilling its obligations under paragraphs (b)(4)(ii) and (iii) of this section;

Provided, however, That if the record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, receipt for purposes of paragraphs (b)(1)(i) and (ii) of this section shall mean receipt by such designated office(s) or department(s);

(2) Where proxies are solicited, the bank shall, within five business days after the record date:

(i) Execute an omnibus proxy, including a power of substitution, in favor of its respondent banks and forward such proxy to the registrant; and

(ii) Furnish a notice to each respondent bank in whose favor an omnibus proxy has been executed that it has executed such a proxy, including a power of substitution, in its favor pursuant to paragraph (b)(2)(i) of this section.

(3) Upon receipt of the proxy, other proxy soliciting material, and/or annual reports to security holders shall forward to each beneficial owner on whose behalf it holds securities, no later than five business days after the date it receives such material and, where a proxy is solicited, the bank shall forward, with the other proxy soliciting material and/or the annual report, either:

(i) A properly executed proxy: (A) indicating the number of securities held for such beneficial owner; (B) bearing the beneficial owner's account number or other form of identification, together with instructions as to the procedures to vote the securities; (C) briefly stating which other proxies, if any, are required to permit se-

curities to be voted under the terms of the instrument creating that voting power or applicable state law; and (D) being accompanied by an envelope addressed to the registrant or its agent, if not provided by the registrant; or

(ii) A request for voting instructions (for which registrant's form of proxy may be used and which shall be voted by the record holder or respondent bank in accordance with instructions received), together with an envelope addressed to the record holder or respondent bank.

(d) The bank shall: (i) respond, by first class mail or other equally prompt means, directly to the registrant no later than one business day after the date it receives an inquiry made in accordance with Rule 14a-13(b)(1) or Rule 14c-7(b)(1) by indicating the name and address of each of its respondent banks that holds the registrant's securities on behalf of beneficial owners, if any;

(ii) Through its agent or directly, provide the registrant, upon the registrant's request and within the time specified in paragraph (b)(4)(iii) of this section, with the names, addresses and securities position, compiled as of a date specified in the registrant's request which is no earlier than five business days after the date the registrant's request is received, of:

(A) With respect to customer accounts opened on or before December 28, 1986, beneficial owners of the registrant's securities on whose behalf it holds securities who have consented affirmatively to disclosure of such information, subject to paragraph (b)(5) of this section; and

(B) With respect to customer accounts opened after December 28, 1986, beneficial owners of the registrant's securities on whose behalf it holds securities who have not objected to disclosure of such information; *Provided, however*, that if the record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such requests, receipt for pur-

poses of paragraphs (b)(4)(i) and (ii) of this section shall mean receipt by such designated office(s) or department(s); and

(iii) Through its agent or directly, transmit the data specified in paragraph (b)(4)(ii) of this section to the registrant no later than five business days after the date specified by the registrant.

NOTE 1: Where a record holder bank or respondent bank employs a designated agent to act on its behalf in performing the obligations imposed on it by paragraphs (b)(4)(ii) and (iii) of this section, the five business day time period for determining the date as of which the beneficial owner information is to be compiled is calculated from the date the designated agent receives the registrant's request. In complying with the registrant's request for beneficial owner information under paragraphs (b)(4)(ii) and (iii) of this section, a record holder bank or respondent bank need only supply the registrant with the names, addresses and securities positions of affirmatively consenting and non-objecting beneficial owners.

NOTE 2: If a record holder bank or respondent bank receives a registrant's request less than five business days before the requested compilation date, it must provide a list compiled as of a date that is no more than five business days after receipt and transmit the list within five business days after the compilation date.

(5) For customer accounts opened on or before December 28, 1986, unless the bank has made a good faith effort to obtain affirmative consent to disclosure of beneficial owner information pursuant to paragraph (b)(4)(ii) of this section, the bank shall provide such information as to beneficial owners who do not object to disclosure of such information. A good faith effort to obtain affirmative consent to disclosure of beneficial owner information shall include, but shall not be limited to, making an inquiry:

(i) Phrased in neutral language, explaining the purpose of the disclosure and the limitations on the registrant's use thereof;

(ii) Either in at least one mailing separate from other account mailings or in repeated mailings; and

(iii) In a mailing that includes a return card, postage paid enclosure.

(c) *Exceptions to Dissemination and Beneficial Owner Information Requirements.* The bank shall be subject to the following with respect to its dissemination and beneficial owner requirements:

(1) With regard to beneficial owners of exempt employee benefit plan securities, the bank shall not:

(i) Include information in its response pursuant to paragraph (b)(i) of this section; forward proxies (or in lieu thereof requests for voting instructions), proxy soliciting material, or annual reports to security holders pursuant to paragraph (b)(3) of this section to such beneficial owners; or

(ii) Include in its response pursuant to paragraphs (b)(4) and (b)(5) of this section data concerning such beneficial owners.

(2) The bank need not satisfy:

(i) Its obligations under paragraphs (b)(2), (b)(3), and (b)(4) of this section if a registrant does not provide assurance of reimbursement of its reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2), (b)(3), and (b)(4) of this section; or

(ii) Its obligation under paragraph (b)(3) of this section to forward annual reports to consenting and nonobjecting beneficial owners identified pursuant to paragraphs (b)(4)(ii) and (iii) of this section if the registrant notifies the record holder bank or respondent bank,

pursuant to Rule 14a-13(c) or Rule 14c-7(c), that the registrant will mail the annual report to beneficial owners whose names, addresses and securities positions are disclosed pursuant to paragraphs (b)(4)(ii) and (iii) of this section.

(3) For the purposes of determining the fees which may be charged to registrants pursuant to Rule 14a-13 (b)(5), Rule 14c-7(a)(5), and paragraph (c)(2) of this section for performing obligations under paragraphs (b)(2), (b)(3), and (b)(4) of this section, an amount no greater than that permitted to be charged by brokers or dealers for reimbursement of their reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2) and (b)(3) of Rule 14b-1, shall be deemed to be reasonable.

* * * *

14c-7 Providing copies of material for certain beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting, or by written authorizations or consents if no meeting is held, are held of record by a broker, dealer, voting trustee, or bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the registrant shall:

(1) By first class mail or other equally prompt means:

(i) Inquire of each such record holder:

(A) Whether other persons are the beneficial owners of such securities and, if so, the number of copies of the information statement necessary to supply such material to such beneficial owners;

(B) In the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the

number of copies of the annual report to security holders, necessary to supply such report to such beneficial owners for whom proxy material has not been and is not to be made available and to whom such reports are to be distributed by such record holder or its nominee and not by the registrant;

(C) If the record holder or respondent bank has an obligation under Rule 14b-1(b)(3) or Rule 14b-2(b)(4)(ii) and (iii), whether an agent has been designated to act on its behalf in fulfilling such obligation, and, if so, the name and address of such agent; and

(D) whether it holds the registrant's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank; and

(ii) Indicate to each such record holder:

(A) Whether the registrant pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to Rules 14b-1(b)(3) and 14b-2(b)(4)(ii) and (iii);

(B) The record date; and

(C) At the option of the registrant, any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to Rule 14b-2(b)(1)(i), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however*, the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

(3) Make the inquiry required by paragraph (a)(1) of this section on the earlier of:

(i) At least 20 business days prior to the record date of the meeting of security holders or the record date of written consents in lieu of a meeting; or

(ii) At least 20 business days prior to the date the information statement is required to be sent or given pursuant to Rule 14c-2(b); *Provided, however,* That, if a record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s);

(4) Supply, in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a)(1) and (a)(2) of this section are made with copies of the information statement and/or the annual report to security holders, in such quantities, assembled in such form and at such place(s), as the record holder or respondent bank may reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with information statements and/or annual reports to security holders pursuant to paragraph (a)(3) of this section, pay its reasonable expenses for completing the mailing of such material to beneficial owners.

NOTE 1: If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act (*e.g.*, "Cede & Co.," nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such a clearing agency who may hold on behalf of a beneficial owner or respondent bank,

and shall comply with the above paragraph with respect to any such participant (*see* Rule 14c-1(h)).

NOTE 2: The requirement for sending an annual report to security holders of record having the same address will be satisfied by sending at least one report to a holder of record at that address provided that those holders of record to whom a report is not sent agree thereto in writing. This procedure is not available to registrants, however, where banks, associations, other entities that exercise fiduciary powers, brokers, dealers and other persons hold securities in nominee accounts or "street names" on behalf of beneficial owners, and such persons are not relieved of any obligation to obtain or send such annual report to the beneficial owners.

NOTE 3: The attention of registrants is called to the fact that each broker, dealer, bank, association, and other entity that exercises fiduciary powers has an obligation pursuant to Rule 14b-1 and Rule 14b-2 (except as provided therein with respect to exempt employee benefit plan securities held in nominee name) and with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) information statements to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the registrant has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses and securities positions are disclosed pursuant to Rule 14b-1(b)(3) and Rule 14b-2(b)(4)(ii) and (iii).

NOTE 4: The attention of registrants is called to the fact that registrants have an obligation, pursuant to paragraph (d) of this section, to cause information statements and annual reports to security holders to be furnished, in accordance with Rule 14c-2, to beneficial owners of exempt employee benefit plan securities.

(b) Any registrant requesting pursuant to Rule 14b-1(b)(3) and Rule 14b-2(b)(4)(ii) and (iii) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) By first class mail or other equally prompt means, inquire of each record holder and each respondent bank identified to the registrant pursuant to Rule 14b-2(b)(4)(i) whether such record holder or respondent bank holds the registrant's securities on behalf of any respondent banks and, if so, the name and address of each such respondent bank;

(2) Request such list be compiled as of a date no earlier than five business days after the date the registrant's request is received by the record holder or respondent bank; *Provided, however,* That if the record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such requests, the request shall be made to such designated office(s) or department(s);

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercise fiduciary powers; *Provided, however,* such request shall not cover beneficial owners of exempt employee benefit plan securities as defined in Rule 14a-1(d)(1); and, at the option of the registrant, such request may give notice of any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(4) Use the information furnished in response to such request exclusively for purposes of corporate communications; and

(5) Upon the request of any record holder or respondent bank to whom such request is made, pay the reason-

able expenses, both direct and indirect, of providing beneficial owner information.

NOTE: A registrant will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A registrant, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to Rule 14b-1(b)(3) and Rule 14b-2(b)(4)(ii) and (iii), provided that such registrant notifies the record holders and respondent banks at the time it makes the inquiry required by paragraph (a) of this section that the registrant will mail the annual report to security holders to the beneficial owners so identified.

(d) If a registrant furnishes information statements to record holders and respondent banks who hold securities on behalf of beneficial owners, the registrant shall cause information statements and annual reports to security holders to be furnished, in accordance with Rule 14c-2, to beneficial owners of exempt employee benefit plan securities.

B. RULES UNDER SECTION 15(c), SECURITIES EXCHANGE ACT OF 1934

* * * *

15c3-2 Customers' free credit balances.

No broker or dealer shall use any funds arising out of any free credit balance carried for the account of any customer in connection with the operation of the business of such broker or dealer unless such broker or dealer has established adequate procedures pursuant to which each

customer for whom a free credit balance is carried will be given or sent, together with or as a part of the customer's statement of account, whenever sent but not less frequently than once every three months, a written statement informing such customer of the amount due to the customer by such broker or dealer on the date of such statement, and containing a written notice that (a) such funds are not segregated and may be used in the operation of the business of such broker or dealer, and (b) such funds are payable on the demand of the customer: *Provided, however,* That this section shall not apply to a broker or dealer which is also a banking institution supervised and examined by State or Federal authority having supervision over banks. For the purpose of this section the term *customer* shall mean every person other than a broker or dealer.

15c3-3 Customer protection—reserves and custody of securities.

* * * *

(e) *Special reserve bank account for the exclusive benefit of customers.* (1) Every broker or dealer shall maintain with a bank or banks at all times when deposits are required or hereinafter specified a "Special Reserve Bank Account for the Exclusive Benefit of Customers" (hereinafter referred to as the "Reserve Bank Account"), and it shall be separate from any other bank account of the broker or dealer. Such broker or dealer shall at all times maintain in such Reserve Bank Account, through deposits made therein, cash and/or qualified securities in an amount not less than the amount computed in accordance with the formula set forth in Rule 15c3-3a.

(2) It shall be unlawful for any broker or dealer to accept or use any of the amounts under items comprising Total Credits under the formula referred to in paragraph (e)(1) of this section except for the specified purposes indicated under items comprising Total Debits under the

formula, and, to the extent Total Credits exceed Total Debits, at least the net amount thereof shall be maintained in the Reserve Bank Account pursuant to paragraph (e)(1) of this section.

(3) Computations necessary to determine the amount required to be deposited as specified in pargraph (e)(1) of this section shall be made weekly, as of the close of the last business day of the week, and the deposit so computed shall be made no later than 1 hour after the opening of banking business on the second following business day; provided, however, a broker or dealer which has aggregate indebtedness not exceeding 800 percent of net capital (as defined in Rule 15c3-1 or in the capital rules of a national securities exchange of which it is a member and exempt from Rule 15c3-1 by paragraph (b)(2) thereof) and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding $1 million, may in the alternative make the computation monthly, as of the close of the last business day of the month, and, in such event, shall deposit not less than 105 percent of the amount so computed no later than 1 hour after the opening of banking business on the second following business day. If a broker or dealer, computing on a monthly basis, has, at the time of any required computation, aggregate indebtedness in excess of 800 percent of net capital, such broker or dealer shall thereafter compute weekly as aforesaid until four successive weekly computations are made, none of which were made at a time when his aggregate indebtedness exceeded 800 percent of his net capital. Computations in addition to the computations required in this paragraph (3), may be made as of the close of any other business day, and the deposits so computed shall be made no later than 1 hour after the opening of banking business on the second following business day. The broker or dealer shall make and maintain a record of each such computation

made pursuant to this paragraph (3) or otherwise and preserve each such record in accordance with Rule 17a-4.

* * * *

15c3-3a Exhibit A—formula for determination of reserve requirement of brokers and dealers under Rule 15c3-3.

	Credits	Debits
1. Free credit balances and other credit balances in customers' security accounts. (See Note A)	$xxx	.....
2. Monies borrowed collateralized by securities carried for the accounts of customers (See Note B.)	xxx	.....
3. Monies payable against customers' securities loaned (See Note C.)	xxx	.....
4. Customers' securities failed to receive (See Note D.)	xxx	.....
5. Credit balances in firm accounts which are attributable to principal sales to customers	xxx	.....
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	xxx	.....
7. Market value of short security count differences over 30 calendar days old	xxx	.....
8. Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days	xxx	.....
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days	.....	xxx

	Credits	Debits
10. Debit balances in customers' cash and margin accounts excluding unsecured accounts and accounts doubtful of collection. (See Note E.)	.....	XXX
11. Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver	.....	XXX
12. Failed to deliver of customers' securities not older than 30 calendar days	.....	XXX
13. Margin required and on deposit with the Options Clearing Corp. for all option contracts written or purchased in customer accounts. (See Note F.)	.....	XXX
Total credits	.....	.....
Total debits	.....	.....
14. Excess of total credits (sum of items 1-9) over total debits (sum of items 10-13) required to be on deposit in the "Reserve Bank Account" (Rule 15c3-3(e)). If the computation is made monthly as permitted by this section, the deposit shall be not less than 105 percent of the excess of total credits over total debits	.....	XXX

[Notes omitted]

APPENDIX B

EXHIBIT 1 TO SPECIAL CONSULTANT'S AGREEMENT (UNCLAIMED PROPERTY CLEARINGHOUSE)

The examination of the books and records of the holders of abandoned property and the demand for delivery of reportable property shall be made pursuant to the following procedures:

1. The holdings of the U.S. Supreme Court in *Texas v. New Jersey* (85 S.Ct. 1136) and *Pennsylvania v. New York* (92 S.Ct. 2880) regarding which state has the right to escheat property shall be followed:

(a) Where the name and last known address of the apparent owner according to the books and records of the holder is in Delaware, it shall be deemed to be reportable to Delaware.

(b) If the holder has no records whatsoever setting forth the name and last known address of the apparent owner, the property shall be deemed reportable to the state of incorporation of the holder.

(c) An address shall be deemed to mean a description of location sufficient for delivery and receipt of mail.

(d) Where the address of the apparent owner cannot be readily ascertained but in fact exists in the books and records of the holder, sampling techniques will be used to allocate the property among the states participating in the review. In such event, if required, sampling techniques will also be utilized to ascertain the proportion of the total reportable property for which the holder has no names or names but no last known addresses.

(e) If the State's Unclaimed Property Law provides an express cutoff date setting forth when the obligation of a holder to report commenced, it will be used.

(f) If the Unclaimed Property Law does not set forth a cutoff date, the holding in *Douglas v. Cranston* (58

Cal.2d 462) will be followed and the obligations of the holder will be deemed to require the reporting of all unclaimed property in the possession of the holder on which the statute of limitations had not yet run as of the effective date of the adoption of the State's Unclaimed Property Act. However, in those instances where the State advises Special Consultant that state law permits retroactive extension or abolition of the statute of limitations, the longest period otherwise permitted by law will be used (subject to the availability of the records of the holder).

(g) If the amount of reportable unclaimed property cannot be ascertained from the books and records of the holder, statistical estimation techniques may be used for such periods.

2. Notwithstanding the provisions of paragraph 1 hereof, nothing contained therein shall prevent, waive or otherwise affect the right of the State to claim from any other state property reported and delivered to such state according to the provisions of paragraph 1. Special Consultant shall upon request of State provide State with such information as may have been obtained relevant to such claim.

APPENDIX C

ANN W. RICHARDS
TREASURER

[STATE SEAL]

STATE OF TEXAS

October 16, 1986

Treasury Department
P.O. Box 12608 Capitol Station
Austin, Texas 78711

LBJ State Office Building
Congress at 17th St.
(512) 463-6000

Ms. Peggy Maggiacomo
Legal Assistant
E. F. Hutton & Company, Inc.
One Battery Park Plaza
New York, N.Y. 10004

Re: Unclaimed and Abandoned Property

Dear Ms. Maggiacomo:

On December 12, 1985, you notified the Texas Treasury that certain property had been reported to the State of New York for which the last-known mailing address is in Texas. Nine months later, we have received from New York a group of mostly worthless certificates and a promise of a check to be sent within four to six weeks.

In the course of your letter (a copy of which is enclosed), you provided an explanation for the practice of reporting Texas property to New York. Because the explanation is contrary to the decision of *Texas v. New Jersey*, 379 U. S. 674, a United States Supreme Court case decided in 1965; and because of the ensuing history of the claim that the State of Texas has pursued with the State of New York, formal demand for the correct reporting to Texas of unclaimed securities and dividends listed in your December 12 letter is made.

Let me explain. Your letter noted that E. F. Hutton "maintains its principal place of business in the State of New York" and that the New York statute "asserts jurisdiction over abandoned . . . property which may be in our possession within the State due to the centralized nature of our security operations." Both of these arguments were advanced to the Supreme Court in *Texas vs. New Jersey* and rejected in the Court's final decision. The Court said that for reasons of "ease of administration" and "equity," the rule adopted requires reporting to the state of last-known address of the creditor (or owner) as shown by the debtor's (holder's) books and records; and if there is no last-known address, then to the state of incorporation of the debtor. If the state of last-known address does not have an applicable escheat law, then the Court further provided that the state of incorporation could hold the property until such time as the state of last-known address enacted law covering the property.

This case is universally observed as establishing unclaimed property reporting priorities. It applies to New York, Texas and all other states. At no time has Texas made New York its agent in any way to take custody of Texans' property. Thus, demand is made that all property abandoned by Texas owners for the relevant period be reported to Texas under its laws.

The reasons why this is necessary are demonstrated graphically in the claim we filed with New York *nine* months ago.

- The delay in our receiving the property;
- The fact that there is no accounting for dividends from the time contact with the owner was lost until the stock was sold; and
- The stock was sold, without advertising the owner's name and without the concurrence of the State of Texas.

Please note that a quick review of the list of securities shows at least four accounts in which the value of the stock has increased significantly since it was sold. Such market risks are eliminated if E. F. Hutton reports to Texas according to the dictates of *Texas vs. New Jersey*. In addition, reporting properly eliminates the next inquiries you and I must work through: 1) where are the accounts for Texas owners that pre-date 1982; 2) where are the accrued dividends for the shares which were turned over to New York, and 3) what dormancy periods were applied?

If New York indemnified you upon your payment of unclaimed property to it, I hope you will do what you can to expedite the proper discharge of the indemnity duty. Also, demand is hereby expressly made that for future report years you report and remit directly to the State of Texas all property described by the *Texas vs. New Jersey* scheme.

The states are working assiduously to improve unclaimed property reporting in the stock securities area—directly through the Unclaimed Property Clearinghouse, by offering a reporting software package for PC and tape reporting. Reporting instructions and forms for you to complete to comply with the law are enclosed. Please call me if you have any questions,

Sincerely,

PAULA SMITH
Director
Unclaimed Property Division

PS na
Enclosure

cc: C. T. Corp. System
811 Dallas Avenue
Houston, Texas 77002

cc: President
E. F. Hutton & Company, Inc.
One Battery Park Plaza
New York, N. Y. 10004

Ms. Betty Powell
Director of Services
Office of Unclaimed Funds
Office of State Comptroller
270 Broadway, Room 911
New York, NY 10007

APPENDIX D

STATE CORPORATION LAWS TREATING RECORDHOLDER AS EXCLUSIVE SHAREHOLDER

Ala. Code § 10-2A-2(13) (Supp. 1991) (shareholder means holder of record).

Alaska Stat. § 10.06.990(36) (Supp. 1991) (defines shareholder as the holder of record).

Ariz. Rev. Stat. Ann. § 10-002(16) (Supp. 1991) (same).

Ark. Stat. Ann. § 4-27-140(22) (Michie Supp. 1991) (adopted the 1984 MBCA definition of shareholder).

Cal. Corp. Code § 185 (Supp. 1992) (defines shareholder as the holder of record).

Colo. Rev. Stat. Ann. § 7-1-102(11) (West 1990) (defines shareholder as the holder of record, but provides that a board of directors may adopt a procedure under which a recordholder may certify that all or a portion of its shares are held for the account of specified persons).

Conn. Gen. Stat. Ann. § 33-334 (West Supp. 1990) (does not define shareholder, but permits only shareholders of record to inspect corporate books and records).

Del. Code Ann. tit. 8, § 220 (Supp. 1991) (same).

D.C. Code Ann. § 29-302(7) (Supp. 1991) (defines shareholder as the holder of record).

Fla. Stat. Ann. § 607.0140(23) (West Supp. 1991) (1984 MBCA definition).

Ga. Code Ann. § 14-2-140(25) (Supp. 1991) (same).

Haw. Rev. Stat. Ann. § 415-2 (Michie 1988) (defines shareholder as the holder of record, but provides that a board of directors may adopt a procedure under which a recordholder may certify that all or a portion of its shares are held for the account of specified persons).

Idaho Code § 30-1-2(f) (Supp. 1991) (same).

Ill. Ann. Stat. ch. 32, para. 1.80(g) (Smith-Hurd 1985) (defines shareholder as the holder of record).

Ind. Code Ann. § 23-1-20-21 (Burns Supp. 1991) (1984 MBCA definition).

Iowa Code Ann. § 490.140(22) (West Supp. 1991) (same).

Kan. Stat. Ann. § 17-6510 (Supp. 1990) (defines stockholder as the stockholder of record for purposes of inspecting corporate books and records).

Ky. Rev. Stat. Ann. § 271B. 1-400(22) (Michie Supp. 1989) (1984 MBCA definition).

La. Rev. Stat. Ann. § 12:1(R) (West 1969) (defines shareholder as holder of record).

Me. Rev. Stat. Ann. tit. 13A, § 102(17) (West 1981) (same).

Md. Corps. & Ass'ns Code Ann. § 1-101(t) (1985) (defines stockholder as one who holds shares of stock in a corporation).

Mich. Comp. Laws Ann. § 450.1487(2) (West 1990) (does not define shareholder, but permits only shareholders of record to inspect corporate books and records).

Minn. Stat. Ann. § 302A.011(29) (West Supp. 1991) (defines shareholder as "a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole . . . shares of the corporation").

Miss. Code Ann. § 79-4-1.40(22) (Supp. 1991) (1984 MBCA definition).

Mo. Ann. Stat. § 351.015(15) (Vernon Supp. 1991) (defines shareholder as the holder of record).

Mont. Code Ann. § 35-1-113(22) (Supp. 1991) (1984 MBCA definition).

Neb. Rev. Stat. § 21-2002(7) (Supp. 1990) (defines shareholder as the holder of record, but provides that a board of directors may adopt a procedure under which a recordholder may certify that all or a portion of its shares are held for the account of specified persons).

Nev. Rev. Stat. § 78.010(f) (Supp. 1991) (defines "stockholder of record" as "a person whose name appears on the stock ledger of the corporation").

N.H. Rev. Stat. Ann. § 293-A: 1 (XVII) (Supp. 1991) (defines shareholder as the holder of record).

N.J. Stat. Ann. § 14A:1-2.1(1) (West Supp. 1991) (same).

N.M. Stat. Ann. § 53-11-2(F) (Michie Supp. 1991) (same).

N.Y. Bus. Corp. Law § 624 (McKinney Supp. 1992) (does not define shareholder, but permits only shareholders of record to inspect corporate books and records).

N.C. Gen. Stat. § 55-1-40(22) (Supp. 1991) (1984 MBCA definition).

N.D. Cent. Code § 10-19.1-01(27) (Supp. 1991) (defines shareholder as "a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of . . . shares of the corporation").

Ohio Rev. Code Ann. § 1701.01(F) (Anderson Supp. 1991) (defines shareholder as "a person whose name appears on the books of the corporation as the owner of shares of such corporation").

Okla. Stat. Ann. tit. 18, § 1065(a) (West Supp. 1991) (defines shareholder as the shareholder of record for purposes of inspecting corporate books and records).

Or. Rev. Stat. § 60.001(20) (1989) (1984 MBCA definition).

15 Pa. Cons. Stat. Ann. § 1102 (Supp. 1991) (defines shareholder as a "record holder or record owner of shares in a corporation").

R.I. Gen. Laws § 7-1.1-2(6) (Supp. 1991) (defines shareholder as the holder of record, but provides that a board of directors may adopt a procedure under which a record holder may certify that all or a portion of its shares are held for the account of specified persons).

S.C. Code Ann. § 33-1-400(23) (Law. Co-op. 1990) (1984 MBCA definition).

S.D. Codified Laws Ann. § 47-2-1-(6) (1983) (defines shareholder as the holder of record, but provides that a board of directors may adopt a procedure under which a recordholder may certify that all or a portion of its shares are held for the account of specified persons).

Tenn. Code Ann. § 48-11-201(24) (Supp. 1991) (1984 MBCA definition).

Tex. Bus. Corp. Act Ann. art. 1.02(A)(15) (West Supp. 1991) (defines shareholder as "the person in whose name shares issued by a corporation are registered at the relevant time in the share transfer records maintained by the corporation").

Utah Code Ann. § 16-10-2 (1987) (defines shareholder as the holder of record).

Vt. Stat. Ann. tit. 11, § 1802(6) (Supp. 1991) (same).

Va. Code Ann. § 13.1-603 (Michie Supp. 1991) (1984 MBCA definition).

Wash. Rev. Code Ann. § 23B.01.400(25) (West Supp. 1992) (same).

W. Va. Code § 31-1-6(o) (Supp. 1991) (defines shareholder as "one who is a holder of record of shares in a corporation").

Wis. Stat. Ann. § 180.0103(14) (West Supp. 1989-1990) (1984 MBCA definition).

Wyo. Stat. § 17-16-140(XX) (Supp. 1991) (same).

APPENDIX E

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

No. 111 Original

STATE OF DELAWARE,

Plaintiff,

and

STATE OF TEXAS,

Intervening Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

On Exceptions to the Special Master's Report

STATEMENT OF RICHARD KIGER

RICHARD KIGER hereby states as follows:

1. I am Master in Chancery for the Court of Chancery of the State of Delaware. In connection with the above-captioned action, I have prepared statistics on two areas of the Court of Chancery workload during the calendar years 1989 to 1991; the data were compiled from business records customarily prepared by the Court in the course of its work.

2. First, I compiled statistics concerning the total number of trial days spent by the Court of Chancery on trials involving corporations incorporated in the State of Delaware. A trial for purposes of these calculations is a

proceeding in a courtroom during which live testimony and other evidence is presented and following which the Court must determine (1) the facts of the case; (2) the applicable law; and (3) the relief that should be granted to the parties. This definition does not include courtroom proceedings during which lawyers make arguments as to how the case should be conducted or the law should be applied, and in which no live testimony is offered. Hence, the focus is on a specific kind of courtroom activity—the trial as defined above—rather than all occasions on which a courtroom is used to conduct the Court's business.

3. The following table sets forth the information I compiled regarding Chancery Court trial days for cases involving corporations incorporated in Delaware:

	1989	1990	1991	Total
Total number of trial days	109	94	79	282
Number of trial days involving Delaware corporations	75	62	47	184
Percentage	69%	66%	59%	65%

4. Second, I compiled statistics concerning the number of opinions specifically addressing issues arising under Title 8 of the Delaware Code, the Delaware General Corporation Law. The numbers of such opinions written during the 1989 to 1991 period are as follows:

	1989	1990	1991	Total
Total number of written opinions	163	185	156	504
Total number of corporation law opinions	105	98	87	290
Percentage	64.4%	53.0%	55.8%	57.5%

5. It should be noted, however, that corporate cases tend typically to be more complex. As a result, opinions in these cases tend to be more elaborate and more demand-

ing of the Court's time than the Court's non-corporate opinions. *See, e.g., In re RJR Nabisco, Inc. Shareholders Litig.*, Allen, C. [1988-89 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,194 at 91,700 (Del. Ch. 1989) (58 pages); *Paramount Communications, Inc.* v. *Time, Inc.*, Allen, C. [1988-89 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,514 at 93,264 (Del. Ch. 1989) (79 pages); *Cede & Co.* v. *Technicolor, Inc.*, C.A. No. 7129, Allen, C. (Oct. 19, 1990) (85 pages); *In re Appraisal of Shell Oil*, C.A. No. 8080, Hartnett, V.C. (Dec. 11, 1990) (90 pages); *Marceau Investments* v. *Sonitrol Holding Co.*, C.A. No. 12065, Jacobs, V.C. (Oct. 2, 1991) (60 pages). Consequently, the above percentages understate the proportion of the Court's time spent on litigation construing the Delaware General Corporation Law.

Dated: May 1992

/s/ Richard Kiger
RICHARD KIGER
Master in Chancery

APPENDIX F

PROPOSED DECREE

DELAWARE, ET AL. v. *NEW YORK*

No. 111 Original

Decided ————————. — Decree entered ————————.

Decree carrying into effect this Court's opinion of ————, —— U.S. —— (199).

DECREE

This cause having come on to be heard on the Report of the Special Master heretofore appointed by the Court, and the exceptions filed thereto, and having been argued by counsel for the several parties, and this Court having considered the record of the proceedings herein and having stated its conclusions in its opinion announced on ————————, —— U.S. ——, and having considered the positions of the respective parties as to the terms of the decree,

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. All applications for intervention by a State, District, or Territory in this case that were filed prior to the date of this Decree are granted. The motion of Texas for leave to file an Amended Complaint in Intervention is likewise granted.

2. As used in this Decree, the term "Delaware Brokerage Corporation" means a corporation incorporated under the laws of Delaware engaged in the securities brokerage business, and the term "Escheatable Property of Unknowns" means moneys and other intangible property held by a person as a result of distributions (including without limitation dividends, interest, redemption payments and principal payment) made with respect to such person by reason of such person's status as a holder of record of securities (including in the term "record" not only a record maintained by or on behalf of an issuer

of securities but also a record maintained by a depository or other intermediate holder, including records of one depository or other intermediate holder which is shown on the records of another) to which such person asserts no claim of beneficial ownership for his, her, or its own account but as to which such person has no identification of, or last-known address of, the beneficial owner of such property.

3. Judgment is hereby granted in favor of Plaintiff Delaware and Defendant New York and against all of the Intervening Plaintiffs, and the complaints of all of the Intervening Plaintiffs are hereby dismissed with prejudice.

4. Judgment upon its Complaint is hereby granted to Delaware and against New York, for the reasons stated in the opinion of this Court, with respect to the Escheatable Property of Unknowns held, to be held in the future, or previously held (but taken in escheat or custodial taking by New York under purported right of any statute or common law principle of New York), by Delaware Brokerage Corporations. Such judgment in favor of Delaware with respect to such Escheatable Property of Unknowns shall be subject to the right of any other state than Delaware to recover such property from Delaware upon proof that the last-known address of a creditor in respect of a particular portion of such property was within that other state's borders. It shall not, however, constitute such proof to demonstrate (as a matter of probability or otherwise) that such creditor was one of a category of persons or business entities conducting a particular business or standing in a particular relationship to the Delaware Brokerage Corporations; but only proof of the specific identity of a creditor and of his, her or its last-known address, as shown in the books and records of the Delaware Brokerage Corporation, shall suffice.

5. New York shall, within 270 days next following the entry of this Decree, prepare a detailed accounting of the

Escheatable Property of Unknowns held by Delaware Brokerage Corporations and previously taken in escheat or custodial taking at any time by New York under purported right of any statute or common law principle of New York, shall serve the same upon Delaware, and shall therewith pay to Delaware such amounts of money, and deliver to Delaware such other property, as shall be shown upon such accounting, or would have been shown had such accounting been properly prepared; except that in the case of any such money or property which is shown by such acounting not to have been at the time of such accounting abandoned for a period of five years, such money or property shall be paid or delivered only upon the expiration of such five-year period, but then shall be paid forthwith. Such accounting shall be in reasonable detail and shall be made on a year-by-year basis on whatever fiscal year New York customarily employs for the operations of its state government. Delaware and New York may by agreement extend the time for preparing and serving such accounting in whole or in part.

6. From and after the date of this Decree, New York and its officers and agents are enjoined from demanding, collecting or seeking to collect (through the institution of any judicial or administrative proceeding or through formal or informal demand, or in any other manner) from any Delaware Brokerage Corporation any Escheatable Property of Unknowns.

7. Should there be any factual dispute concerning whether property is entitled to be recovered by Delaware from New York under this Decree, or any dispute with respect to paragraph 4 of this Decree or the accounting ordered by paragraph 5 of this Decree, that is not adjusted and settled between the parties to such dispute, either such party may apply at the foot of this Decree for relief from this Court, and this Court may make such order in the premises, including an order of reference, as it shall then deem appropriate.

8. Any relief prayed for by any party to this action inconsistent with the foregoing is denied.